

REMARKS

Applicants have amended the claims in order to more particularly define the invention taking into consideration the outstanding official action and the prior prosecution in this application.

In this regard, the undersigned attorney briefly discussed the status of the application with Primary Examiner Fay, who signed the outstanding final rejection. The undersigned attorney inquired concerning the status of the Supplemental Amendment filed on October 9, 2003. Examiner Fay indicated that this application had apparently not been scanned into the system and she did not have the paper file. The undersigned attorney is not sure whether or not the outstanding Official Action took into consideration the amendment filed October 9, 2003 although it is noted that the Official Action was not mailed until almost four months later, on February 3, 2004. A copy of the stamped receipt card bearing the date October 9, 2003 is submitted herewith along with a signed copy of the filed Supplemental Amendment for consideration at this time.

In this regard, it will be noted that the Supplemental Amendment contains claim 41 which is not referred to in the Official Action. In item 2 at the top of page 3 in the Official Action it is stated that by the amendment filed September 11, 2003, claims 1-12 and 36-39 have been cancelled and claims 13, 16, 18, 20-23 and 32 have been amended. It is further stated that claims 13-35 and 40 are currently pending for prosecution on the merits. This of course includes claims 15 and 16 which are part of the elected invention as noted in the undersigned's response filed December 6, 2002.

However, in a telephone conversation with Examiner Kwon, the Examiner indicated that claims 15 and 16 have been withdrawn from consideration in view of the election of species and therefore the statement that claims 13-35 are pending for prosecution on the merits was not intended to apply to claims 15 and 16. However, in view of the fact that these claims are dependent on an allowable claim, the election requirement should be withdrawn and claims 15 and 16 allowed.

Applicants acknowledge the indication concerning the Information Disclosure Statement which was submitted in support of the level of one of ordinary skill in the art

to which the invention pertains. Accordingly, clarification is requested with respect to the statement that the information referred to therein has not been considered as to the merits. Clearly the level of one of ordinary skill in the art with respect to the merits and confirmation that at least the references have been considered to that extent is most respectfully requested.

The rejection of claims 13, 14, 17-20, 23-35 and 40 under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected to make and/or use the invention has been carefully considered but is most respectfully traversed for reasons of record and as would apply to the amended claims.

Applicants most respectfully submit that it appears that the Examiner does not consider that sufficient information is provided for one of ordinary skill in the art to recognize that the claimed compound can treat all diseases caused by an MPV. Furthermore, the Examiner apparently does not consider the specification provides guidance as to the prevention of all diseases caused by an MPV. While applicants do not agree with this indication, and it is believed that the specification is fully enabling to one of ordinary skill in the art without undue experimentation, claims 13, 33 and 40 have been further amended to specific diseases. This amendment does not introduce new issues at this stage, especially in view of the fact that no action has issued on claim 41 in the outstanding Official Action. Accordingly, entry of this amendment is in order.

Applicant most respectfully submit that specific support for this specific group of diseases can be found at page 6 of the specification. Claims 25 and 26 have been deleted from the application without prejudice or disclaimer.

The rejection of claims 13-14, 20, 22-23, 31, 32, 33 and 40 under 35 U.S.C. § 102(b) as being anticipated by Rotstein et al. has been carefully considered but is most respectfully traversed in view of the further amendments to the claims with the addition of the proviso to exclude disulfiram from the claim. With regard to claim 40, this claim has been restricted to the compounds of formula (I) and (II) as defined in claim 13. Finally, with regard to the rejection in view of Rotstein, applicants have amended claims

Appl. No. 09/763,616

13, 33 and 40 to exclude the compound disulfiram by proviso thereby obviating the anticipation rejection. Accordingly, it is most respectfully requested that this rejection be withdrawn in view of the amendments to the claims.

In view of the above comments and further amendments to the claims, favorable reconsideration and allowance of all the claims now present in the application are most respectfully requested.

Respectfully submitted,

BACON & THOMAS, PLLC

Date: August 3, 2004

By:   
RICHARD E. FICHTER  
Registration No. 26,382

625 Slaters Lane, Fourth Floor

Alexandria, Virginia 22314

Telephone: 703-683-0500

Facsimile: 703-683-1080

S:\Producer\ref\DAVIES COLLISON CAVE\BERNARD 763616\A04.wpd